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Subject: Deschutes background 1-pager

Good morning Jim and Dave,

Jim H asked me to draft a summary of where we are on the Deschutes TMDL and associated litigation, in order to lay the groundwork with the management here at HQ. We don't want to get ahead of the Regional decision-making, but we want to reduce the amount of time our leadership will need to get up to speed on these issues.

Using past materials and the help of Miranda in R10, I've drafted this 1-pager. If you have a chance between now and Monday morning, can you take a quick look and let Jim H and me know if there are any changes or additions you would recommend?

Thank you,

Chris

Chris Hunter

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Watershed Branch, Office of Water

US Environmental Protection Agency

Deschutes TMDL & Litigation

Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015¹. The TMDL addresses 73 Water Quality Limited Segments impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment).

Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The case is now fully briefed and we are awaiting the court's reply, which will either grant our request to stay the case until June 29, or render a summary judgement that EPA must act by June 29.

Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days. (b) (5)

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[REDACTED]

[REDACTED]

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Next Steps

A briefing on the proposed TMDL decisions for the RA is currently scheduled for May 21st. Following that briefing, the Region will coordinate with HQ OWOW staff on background/briefing materials for AAOW. Once final decisions have been made on the TMDL, the Region will need to work quickly with HQ and the state on the disapproved segments to determine how replacement TMDLs will be developed.

1 [REDACTED]